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BY THE SENATE,

AUGUST 6th, 1861.

Read and 25,000 copies ordered to be printed.

By order of WM. KILGOUR, *Sec.*

REPORT AND RESOLUTIONS

OF THE

JOINT COMMITTEE

OF THE

Senate and House of Delegates of Maryland,

UPON THE

REPORTS AND MEMORIALS OF THE POLICE COMMISSIONERS

AND THE

MAYOR AND CITY COUNCIL OF BALTIMORE.

ADOPTED IN THE HOUSE BY A VOTE OF 42 YEAS TO 7 NAYS,
AND IN THE SENATE BY A VOTE OF 12 YEAS TO 6 NAYS.

FREDERICK, MD.
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1861.

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To the Honorable the President of the Senate
and the Speaker of the House of Delegates:

The Joint Committee on Federal Relations, to whom was referred the Report of the Police Board of Baltimore, enclosing a Memorial of Charles Howard, William H. Gatchell and John W. Davis, Esqs., members thereof, to the Congress of the United States, together with a communication from the Mayor of Baltimore, enclosing a Memorial of the Mayor and City Council of Baltimore to Congress, with accompanying documents; respectfully ask leave to submit the following Report:

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REPORT.

It is well known to the members of both Houses, that for several years prior to the commencement of the regular session of the Legislature of Maryland in January, 1860, a state of things had existed and been developing itself in the city of Baltimore, which imperatively demanded the interposition of the law-making power. It is needless to dwell upon the causes or magnify the degree of the evils referred to, it being matter of public notoriety that the laws for the personal protection of the citizen, and especially those which guaranteed the free and inviolate exercise of the elective franchise, had almost wholly ceased to be practically operative, and an organized system of lawlessness, violence and terror had usurped their place. The extent to which the city of Baltimore had suffered, not only in her good name, but in her material prosperity, from the causes referred to, is familiar to the public at large, and the subject had for some time occupied the serious attention, as it largely concerned the interests, of the whole people of the State. At the elections held in the Autumn of 1859, the outrages in Baltimore, under the eyes of the municipal authorities, were of so flagrant and insufferable a character, as to raise the direct and unavoidable issue between anarchy and civil government. Proofs of the most overwhelming conclusiveness having been furnished to the General Assembly at its regular session referred to, there was no recourse but to take vigorous steps to re-establish the supremacy of the laws. By the Act of 1860, ch. 7, (incorporated in the 4th article of the Code of Public Local Laws, beginning at section 806,) all police authority previously delegated to the corporation of Baltimore was accordingly withdrawn, and the same was conferred, with greatly enlarged powers, upon a Board, called the Board of Police, composed of five members. Of these, it was provided that four, who were called "Commissioners," should be elected by the Legislature for designated terms of years, at the expiration of which, their successors were to be appointed in the same manner. It was further enacted, that the Mayor of the city, for the time being, should *ex-officio* be a member of the Board. Messrs. Charles Howard, William H.

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recent and absorbing facts connected with the case of the memorialists are, in substance, as follows:

On the 27th day of June last, the city of Baltimore and State of Maryland being in the enjoyment of entire tranquility, except in so far as the same was interrupted by the presence and transit of large bodies of troops in the service of the General Government, a proclamation was issued by Major General Banks, of the U. S. Army, commanding the Department of Annapolis, in which he informed the public that "by virtue of authority vested in him, and in obedience to orders as Commanding General of the Military Department" alluded to, he had arrested and detained in custody Col. George P. Kane, the Marshal of Police of the city of Baltimore. Disclaiming all purpose, and announcing that his instructions did not authorize him, "to interfere in any manner with the legitimate government of the people of Baltimore or Maryland," Gen. Banks went on to charge the existence, in his Department, of unlawful combinations of men, organized for resistance to the laws of the United States and of Maryland, providing hidden deposits of arms and ammunition, encouraging contraband traffic with the enemies of the country, and stealthily waiting opportunity to combine their means and forces with those in rebellion against the authority of the Government. Of these combinations he charged that Col. Kane was "believed" to be cognizant, and that he was "both witness and protector to the transactions and parties engaged therein," and consequently could not be regarded by the Government as "otherwise than at the head of an armed force hostile to its authority, and acting in concert with its avowed enemies." The Proclamation then announced that "for this reason" Gen. Banks, "superseding" Col. Kane's "official authority and that of the Commissioners of Police," had arrested and detained Col. Kane, and "in further pursuance of my instructions," he added, "I have appointed, for the time being, Col. Kenly, of the first regiment of the Maryland Volunteers, Provost Marshal in and for the city of Baltimore, to superintend and cause to be executed the Police Laws provided by the Legislature of Maryland, with the aid and assistance of the subordinate officers of the Police Department. And he will be respected accordingly."

On the morning of the same day, Col. Kenly proceeded, by the orders of Gen. Banks, to the office of the Board, and read them this Proclamation, by way of notifying them that their authority was at an end. He then took immediate possession of the Marshal's office and the Police

stations, (all belonging to the Corporation,) and assumed the execution of all police power within the city limits. The Board being of course unable to resist the military power of the Government, had no alternative but to submit to force. They however protested, in a dignified and becoming manner, as officers of the State of Maryland, (the Mayor uniting) against the arbitrary subversion of its laws and government by the military authority of the United States, and refused to recognize the right of the officers and men of their police force to receive orders or directions from any authority but their own. Carrying out the obvious spirit, and obeying the letter, of the law which they had sworn to support, and under which, alone, the Board and its officers and men had official existence or authority, they also adopted and published the following resolution:

"*Resolved*, That in the opinion of the Board, the forcible suspension of their functions suspends at the same time the active operation of the Police Law, and puts the officers and men off duty for the present, leaving them subject, however, to the rules and regulations of the service as to their personal conduct and deportment, and to the orders which this Board may see fit hereafter to issue when the present illegal suspension of their functions shall be removed."

Having thus asserted, as was their duty, and in the only mode left to them, the supremacy of the local laws of Maryland within their legitimate locality, the Board refrained from all interference with the proceedings of the Provost Marshal, who at once commenced the appointment of individuals, at his discretion, to assume the places and discharge the functions of policemen. Not content with thus supplanting the subordinates of the Police Board, he proceeded further and removed the officers in the Fire Alarm and Police Telegraph Departments, who receive their appointments by law from the Mayor and City Council, and substituted appointees of his own in their stead. Things remaining in this unnatural position, on the morning of the 1st of July the four Commissioners of Police, Messrs. Howard, Gatchell, Hinks and Davis, were arrested at their residences, two or three hours after midnight, by large bodies of troops under the orders of Gen. Banks, and were removed at once to Fort McHenry, and placed for the time under close confinement. When the morning dawned, the principal places of the city were found occupied by masses of artillery and infantry, and sentinels were posted on the lines from the various camps into the heart of the population. In the course of the forenoon a Proclamation ap-

peared from Gen. Banks. It stated the arrest of the Commissioners to have been made "in pursuance of orders issued from the Headquarters of the Army at Washington, for the preservation of the public peace in this Department." By way of justification, it alleged that "the Headquarters under the charge of the Board, when abandoned by the officers, resembled in some respects a concealed arsenal;" that "after recognition and protest against the suspension of their functions," the Board had continued their sessions daily; that upon a forced and unwarrantable construction of the Proclamation of 27th June they had declared the Police law suspended and the Police officers and men off duty for the present, "intending to leave the city without any Police protection whatever;" that they had refused to recognize the officers and men appointed as policemen by Col. Kenly, and finally, held, subject to their orders "now and hereafter, the old Police force, a large body of armed men, for some purpose not known to the Government and inconsistent with its peace and security." It then further stated that the troops in the city had been sent there "to anticipate any intentions or orders" on the part of the Police Board, and concluded with a protestation, as in the previous Proclamation, against "all desire, intention and purpose, on the part of the Government, to interfere in any way whatever with the ordinary municipal affairs of the city of Baltimore."

The Commissioners being thus removed, by force, from their sphere of duty, and held in prison to prevent them from discharging it, the military occupation of the city was continued—the Court House and many public places and offices, which belonged to the corporation, being appropriated to the use of the troops, who thronged the streets and squares also, by night and by day. Meanwhile, being the only member of the Board who had not been deprived of liberty, the Mayor of the city, Mr. Brown, in order, if possible, to relieve his fellow-citizens from the embarrassments and perils of their situation, expressed his readiness to Gen. Banks to undertake the management of the Police, and Col. Kane, with great disinterestedness, was willing to make the sacrifice of his position, so that the Mayor might have no difficulty in consummating the arrangements he proposed. Gen. Banks, however, responded unfavorably to the proposition, after some delay, and on July 10th announced the consummation of his plans in the following proclamation:

"To the People of Baltimore:—

Headquarters, Department of Annapolis,
July 10, 1861.

By virtue of authority vested in me, as Commanding Officer of this Department, *I have appointed, and do hereby appoint George R. Dodge, Esq., of Baltimore, Marshal of Police*, vice Col. John R. Kenly, who, being relieved of this service at his own request, now assumes command of the First Regiment of Maryland Volunteers, on the Upper Potomac, in the State of Maryland. I have made this appointment at the suggestion and upon the advice of very many influential and honorable citizens of Baltimore, representing its different sections, parties and interests. And in order that public opinion shall have proper influence, and the civil authority due weight, in all municipal affairs, it is my desire and expectation that the Marshal shall receive suggestion, advice and direction from them and other loyal citizens, as from all the Departments of the Government of the city, and *in all respects to administer every department of the Police law* in full freedom, for the peace and prosperity of the city, and the honor and perpetuity of the United States.

N. P. BANKS, Major General,
Commanding Department of Annapolis."

The names of the "influential and honorable citizens," who committed the grave offense of aiding in the subversion of the civil government of the State, within the limits of Baltimore, by force of arms, have not been given officially to the public, nor has any official disclosure been made of the names of those, under whose "advice and direction" the functions of Mr. Dodge are exercised. These will of course be subjects for judicial inquiry hereafter. The appointment of Mr. Dodge was accompanied by the withdrawal of the troops from the heart of the city, and, from that time to the present, the laws of the State have been silent in Baltimore, so far as concerns its Police Department, and the lives and property of the people have been at the mercy of the organization, thus set on foot by the military power of the Federal Government. On the 21st of July a Bill was introduced in Congress, appropriating one hundred thousand dollars for the payment of "the Police organization of Baltimore employed by the United States." It was passed by the House of Representatives under the pressure of the previous question, one of the representatives from Baltimore (Mr. May) having in vain attempted to obtain the floor to discuss it, and having been

sharply reprimanded for a breach of the rules of the House, in protesting against it, as "a bill to provide for the wages of oppression." In the Senate it was adopted with equal precipitancy, against the solemn remonstrance of both of the Senators from Maryland. The Congress of the United States thus ratified the action of General Banks in the premises—so far as such action was susceptible of ratification—and the existing Police government of Baltimore, and the suppression of the State authority therein, may therefore be regarded as the combined and deliberate act of the Executive and Legislative Departments of the United States Government.

It remains only to add, that one of the Police Commissioners (Mr. Hinks) having been released from custody, on account of failing health, the Memorial, of which a copy has been communicated to the Legislature, was presented to Congress on behalf of Messrs. Howard, Gatchell and Davis; protesting against the wrongs inflicted on them, officially and personally; challenging an investigation of any charges against them; and demanding, as matter of right, that their case should be examined by Congress, or remitted, for hearing and determination, to the tribunals of justice. The memorial of the Mayor and City Council of Baltimore, likewise communicated to us and referred to the Committee, and demanding redress from Congress for the grievances which have already been discussed, was also presented to that body, with the full exposition of facts contained in the Message of the Mayor thereunto appended. It is sufficient to say, that the appropriation of money for the support of the Federal police in Baltimore, was made after the presentation of both the memorials in question, and is the only answer which has been given to the prayer of either. In the meantime, the Grand Jury of the District Court of the United States for the Maryland District, then and till lately in session, finally adjourned, without being able to discover any ground of accusation against the members of the Police Board, and the President of the United States, having been called upon to communicate to the House of Representatives the grounds for their arrest and imprisonment, tacitly confessed that there are none, by declining to furnish the information, on the score that it would be "incompatible with the public interests." On the day before the meeting of the General Assembly, (the 29th of July,)—their memorial still pending before Congress—the gentlemen in question, with sundry other citizens of Maryland, against whom no tangible accusation has been lodged or disclosed, were nevertheless removed, under guard, from Fort McHenry to Fort La Fayette, at the en-

trance to the harbor of New York, where they are now closely confined, by military order, under many privations and restrictions, at a distance from their families and friends. The order itself which directed their removal described them as "State prisoners"—an appellation hitherto happily unknown in the nomenclature of offenders under the laws and Constitution of this Republic. What may be the further destination or ultimate fate of the victims, can be determined only by those who are able to anticipate and fathom the caprices of irresponsible and arbitrary power.

Upon the facts disclosed by this simple and unexaggerated statement, which has been given without coloring or argument, your Committee propose to comment as briefly as they may. The statement itself would be its own best comment, in any ordinary condition of the public mind. But the tide of partisanship and passion, which is now rolling over the land, seems to have swept away the landmarks of our older and better days, and there is scarce a principle of private right or public freedom, so fundamental or so sacred, as to be sure of recognition, or superior to challenge or denial. A little while ago, and all the sympathies and instincts and convictions of the American people, like all the traditions of their own history and of the mighty and free people from which they sprang, were impulsively upon the side of freedom as against power; of law as against prerogative; of self-government as against government imposed. With a strange and fearful revulsion, they appear, of late, to have rushed back a century, to theories which the Declaration of their Independence and the swords of their fathers were supposed to have buried forever. No man therefore knows the acceptance which may greet, to-day, what yesterday was a consecrated axiom of common right and constitutional liberty. It becomes the representatives of the people of Maryland, then, upon an occasion so important as the present, and in contemplation of grievances so monstrous and so galling as those disclosed by the Memorials before them, to re-assert, distinctly and manfully, the principles which their fathers asserted; to claim, as becomes them, the inheritance which their fathers bequeathed; and to protest and remonstrate, and appeal to their countrymen, against the usurpations, of which their soil has been made the theatre, their State the subject, and their citizens the victims.

It is not a question of Union or Disunion, of North or South, of treason or loyalty. It is the naked and desperate alternative of constitutional government and free institutions on the one hand, and State annihilation and individual enslavement on the other.

The wrongs disclosed by the Memorials under consideration are of two classes: the one affecting individual citizens—the other assailing the dignity and rights of the State of Maryland herself, as a member of the Federal Union. The principles of constitutional law, which apply to the latter class, have never been formally questioned, although in recent executive documents of the Federal Government a disposition has been manifested to ignore or invade them, and practically, as in the instances before us, they have more than once been set at naught. No statesman or jurist, who respects his reputation, can be found definitively to deny that in the sphere of the powers not delegated by the Constitution to the Government of the United States, the States of the Union have exclusive legislation and supreme jurisdiction within their territorial limits. The Federal Government has no more right to interfere with the State Governments, in their sphere, than the latter to invade the limits assigned to Federal authority. Among the powers not communicated by the Constitution to the General Government are those of internal government and police in the States. Upon so plain a point, judicial interpretations are superfluous. Repeated adjudications of the Supreme Court of the United States have nevertheless recognized the powers in question as belonging to the States exclusively and fundamentally, and have determined that any invasion of them by the Federal Government is fatally repugnant to the Constitution. If it were otherwise, State Governments would not exist. They would be without power and without object. Their control over their own internal polity is, in fact, their very essence as governments, and the only qualification attached to it is, that they shall legislate in conformity with the few limitations of the Federal Constitution applicable to the matter. That done, their sovereignty in the premises is indisputable—a sovereignty not above the Constitution nor against it, but guaranteed by it, and within it, and part of it.

As has already been stated, the Police law of Maryland, after passing the ordeal of the courts, was found to be in strict accordance with the Federal and the State Constitutions, and the officers appointed under it were therefore constitutionally appointed, and held their offices as constitutionally as the President held his. Mr. Lincoln consequently had no more right to remove the Police Board or Marshal, or to cause Gen. Banks to remove them, than they had to remove Mr. Lincoln or Gen. Banks. Congress has no more constitutional right to appoint or pay Police officers in their stead, than the General Assembly of Maryland would possess, to appoint and pay officers for the

United States Army or Navy. This is a point about which it is impossible for intelligent men honestly to dispute. If the Commissioners or the Marshall of Police had been guilty or were suspected, upon lawful evidence, of crime, their arrest and trial, by the competent authority, would have vindicated public justice. If their arrest or conviction had left their offices vacant, permanently or for the time, it was for the laws and authorities of Maryland to supply their places. If they were criminal at all, they were criminal and punishable, as individuals and not as officers, for their official character could not qualify or affect their crime or its punishment, for better or for worse. The same principle applies to the Police force under them. If any members of that force were guilty of treason or misprision of treason, it was as citizens and not as policemen, and they were punishable as men and not as officers. The Federal authority had only to deal with them as with all individual wrong-doers, and if that created a necessity for their being displaced as officers, it was for the competent State authority of Maryland so to displace them, and to appoint their successors. If an officer of the army of the United States, or a member of the Cabinet, were to commit murder or other crime in Maryland, in violation of the State laws, and were arrested or convicted thereunder, surely the fact of his arrest or conviction would hardly be regarded, at Washington, as authorizing the Governor of Maryland to fill his place in the army or the Cabinet, and the Legislature of Maryland to keep his successor in its pay. And yet the Constitutional authority, in the one instance, would be identically the same as in the other, and the very statement of the proposition, in either case, reduces it to an absurdity. The action of Gen. Banks, therefore—whether regarded as his own action or as that of the Commander-in-Chief of the army, or of the President, or any other officer of the Federal Government—was, in the language of the resolution adopted by the Police Board, "not warranted by any provision of the Constitution or laws of the United States, or of the State of Maryland, but in derogation of all of them." The Board did no more than their duty, as constituted authorities of the State of Maryland, when they protested accordingly against it, and they but obeyed the obligation of the law which created their office, and of the oath which they had sworn under its provisions, when they refused to transfer their officers and men to an unlawful and unauthorized command, and declined to recognize, as a police force, in any sense legitimate, the individuals designated as policemen by the Provost Marshal, in open violation of the express

laws of the State, and in subversion of its government and constitutional supremacy. The subsequent proceedings of Congress have only added aggravation to the outrage, for as Congress has no better claim than the Executive to invade the constitutional rights of the States, and its attempted confirmation of an unconstitutional act cannot render such act in any sense more constitutional, its endorsement of the usurpation of the President commits the whole Federal Government to that usurpation, and places it in the attitude of deliberately revolutionizing the fundamental institutions of the country.

The Committee are of course aware of the appeals which have been made to "military necessity," to justify recent encroachments, by the Government, upon public and private right. Self-preservation, it is insisted, is the right and duty of every government, and the Government of the United States is therefore authorized to do all things which may become necessary to preserve it.

If these ideas were recognized by the Constitution, under any circumstances, (which the Committee deny,) they would not apply to the branch of the present case which is now under consideration. Tye State of Maryland has not assumed to withdraw herself from the Union, and is in no position of hostility against the Government. She is neither a foreign State nor a conquered country. She is represented in the Federal Congress, although her representatives are practically silenced, and the processes and judgments of the Federal Courts have been uninterruptedly and cheerfully obeyed and respected by her people. All the customary functions of the Government are freely exercised, by its officers, within her limits. She contributes to its support, through her custom-houses, and is to be heavily taxed for the expenses of the fratricidal war which it is waging, against her remonstrance. No Proclamation of the President has ever declared her to be arrayed against the laws, and no troops have been called out for their enforcement among us. Not only has martial law never been proclaimed in Maryland, but Gen. Banks, in his Proclamation of June 27, in the very act of suppressing the State authority and laws, took singular pains to declare (as has been stated) that it was not his purpose, nor was it in consonance with his instructions, "to interfere, in any manner, with the legitimate government of the people of Baltimore or Maryland." Confessedly therefore—clearly at all events—if any necessity had demanded and could justify the exercise of extraordinary and extra-constitutional powers, it was a necessity which would have been fully met, by the action of the Government against indi-

viduals, but which in no way demanded, and in no way could have justified, a gross violation of the Federal compact, by overthrowing the constitutional laws of Maryland and destroying her federal equality and constitutional independence. To say that "military necessity" can justify such acts, is to say, as explicitly as could be said in words, that it justifies the Federal authorities in breaking up the Government themselves, under the guise of preventing it from being broken up by others. The forms of government may outlast such a catastrophe, but the Federal Government known to and created by the Constitution must end with it. What remains is revolution, in the garb of government, and depending for its legitimacy upon bayonets. The State over whose institutions these are lifted, is no longer a State of the Union, in effect, whatever she may be in name. She has no Constitution, no government, no laws, that she can call her own. She is ruled by external and arbitrary power. Her people are no longer free.

With respect to the individual cases of our fellow-citizens, whose memorial is before us, the principles of constitutional right are equally positive and clear. If the charges of General Banks against the Marshal of Police amount to anything and are well founded, they constitute a case of treason or misprision of treason, cognizable under the laws, and furnishing cause for arrest and trial by the competent tribunals. Against the Commissioners there is nothing alleged, in either proclamation, upon which a warrant could be lawfully issued, or an indictment found, and they but state, in their Memorial to Congress, what every well-informed citizen must recognize as obvious—that no legal tribunal would hesitate to discharge them, if brought before it, upon sworn allegations so simply frivolous and futile. But if the Government thought otherwise—if its high officers were really persuaded, that in the nineteenth century, and under the free institutions of the freest nation upon earth, it was lawful to arrest and imprison men of high character and irreproachable integrity—or any other men—upon the mere suspicion of their entertaining "purposes" which were admitted to be "not known to the Government," while they were alleged, in the same breath, to be "inconsistent with its peace or security"—surely the courts of justice, which were open, unobstructed and active, were the rightful tribunals to pass upon the matter. The Commissioners, as well as the Marshal, were either charged with crime, or they were not. If they were not, it was a heinous crime to arrest and imprison them. If they were, their rights and the demands

of public justice required imperatively that they should be dealt with according to law. To refer to the constitutional provisions in which principles so vital are embodied, appears like seeking after proof that we see by God's sunlight, or have our breath from his air. "The right of the people," says the 4th Amendment to the Constitution, "to be secure in their persons, houses, papers and effects against unreasonable searches and seizures *shall not be violated*, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." "No person," says the 5th Amendment, "shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger." "In all criminal prosecutions," says Article VI. of the same, "the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation—to be confronted with the witnesses against him —to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

These provisions are the fundamental law of the land—a law to the government as well as to the people—a covenant of right and liberty, and a limitation upon power. They are an essential and indefeasible portion of the compact which created the Union, and of the conditions upon which alone the people of Maryland and of all the States consented to abide by it. Without them everything else in the Government is worthless, for they represent and guard the great principles of human freedom, which the Union was framed to perpetuate, and compared with which all governmental forms—all names and symbols, all institutions, and traditions, and men—shrink away into dust and nothingness. Of these provisions there is not a single one which has not been trampled upon in the cases before us. Themselves arrested and their papers seized, without warrant or oath of probable cause—held to answer, not only without presentment or indictment, but after a Grand Jury had failed to indict or present—denied a speedy and public trial—indeed, refused the privilege of trial altogether—carried away, by force, from the State and district where any offense alleged against them must have been committed, if at all—no information of the nature and cause of the accusation vouchsafed to them—the President of the United States,

upon the contrary, refusing to communicate such information even to Congress, on the ground that to do so would be "incompatible with the public interests"—confronted with no witnesses against them—allowed to call no witnesses in their defense—separated from their counsel, as from their homes and friends—the Maryland Commissioners of Police now imprisoned at Fort La Fayette, are a living testimonial of the overthrow, within their State, of every barrier erected by the Constitution between the freedom of the citizen and the onslaught of arbitrary power. Let it be to their honor and the honor of Maryland, that they have not sullied her name or theirs, by unmanly submission or mean compliance. It will be the eternal shame of the whole nation, if its people, as one man, do not demand and compel their deliverance.

Upon the ground of "military necessity," already discussed in another point of view, there is no doubt that defense will be made for the Government, against the grave responsibilities which these overt acts of individual oppression must entail.

But the Committee, now, as before, rely upon the Constitution of the United States as a bar to all such attempted justification or excuse. There is no foundation whatever for it in our history or our institutions, nor is it any part of our Anglo-Saxon inheritance. No mode of reasoning is more false than that which appeals to what are called "general principles of government," to determine the powers of the particular Government under which we live. It is a Government *sui generis;* to be construed according to its own peculiar principles and none other. It is a Government of enumerated and delegated powers, framed expressly upon the theory that it shall exercise no powers except those which are so delegated and enumerated. Where it finds no prerogatives in the Constitution, it was not meant to be clothed with them. There are no "inherent attributes" about it. This principle, recognized by all the Courts of the land, is insisted upon more strenuously and more repeatedly nowhere, than in the Courts of the Northern and Eastern States. The written Constitution of the Union, as all readers of history know, was expressly devised to get rid of inferences and implications, of all sorts, from general principles and abstract reasoning. No other Government is like ours in this, and the analogies of no other Government apply to it. To insist, therefore, that it has the right to preserve itself by any and all means, whether constitutional or unconstitutional—because other governments, which have no written constitutions and no limitations of power, have adopted the

rule to keep power as long as power can be kept, and through any means by which they can retain it—is to reason from an analogy which does not exist, upon principles which are manifestly false, to a conclusion which is subversive of our institutions. This Government was not intended to be kept together, by any means, through the exercise of any powers, or by the application of any principles, except those of its own constitutional providing. To attempt to preserve it, in name, at the expense of the Constitution, is to destroy it, in theory and fact. Once let "necessity," of any sort, be recognized as above the Constitution, and our system is any thing and every thing which it may be found necessary to make it. As "necessity" has no law, so it has no limit. The same logic by which it justifies the suspension of one constitutional provision, will justify, in like case, the overthrow of all. The same pretext which it invokes to suppress the functions of the Judiciary, may call for the suppression of Congress as well. It may demand a limited monarchy to-day, and by the same process of reasoning may legitimize an absolute monarchy, or a dictatorship, to-morrow. It already finds the liberty of citizens in its way—what is to prevent it from finding their lives equally so, a month hence? If it justifies imprisoning them, in violation of law and Constitution, it will equally justify their assassination. Concede that it has rightfully suppressed the authority of Maryland in Baltimore, and it may, at any time, as rightfully abolish the whole State Government. It is "the tyrant's plea," and constitutional freedom dies with its predominance.

If "military necessity" had been contemplated by those who framed the Constitution, as a justification for suspending or invading its guarantees, would they not have said so in terms? They provided, by special clause, for the suspension of the *Habeas Corpus*—would they have paused at the enumeration of a single case, in which the laws and the Constitution might be temporarily silenced, if they had intended that the Executive or Congress might stifle all the voices of constitutional liberty, at the sound of the trumpet? Why specify the limits of "military necessity," in the one isolated case, if they meant it to cover all cases? Men who honestly reason to the conclusions of the Administration, upon the point in question, seem to labor under the delusion, that the framers of the Constitution were technical men of law and peace, who had never known war or its terrible exigencies, and did not cover its contingencies with their forecast, when they were laying the foundations of a mighty nation. They seem to forget that the men who sat in the Convention, were the men who had

planned the Revolution and had just returned from its triumphs: heroes and sages, who had grappled with war and its necessities, in field and camp and council: free men, who knew, from experience, what oppression was: bold men, who had smitten arbitrary power and abhorred it, and meant to build a bulwark against it, in war as well as peace, for evermore. When such men, in the charter of their Government, fenced round the freedom of the citizen with the guarantees which have been cited, and gave to military power no privilege to override them, it was because they meant the citizen to be free, and were resolved that military force should be kept in perpetual subordination to the law. They knew that in peace there is small danger to civil liberty, and they meant to rescue their priceless heritage from the chances and ambitions of war. They had entered upon the Revolution, with the Declaration of Independence before them, charging these, among the oppressions of the British King:—

"He has kept among us, in times of peace, standing armies, without the consent of our Legislature."

"*He has affected to render the military independent of and superior to the civil power.*"

They believed these to be grievances, and took up arms to redress and not to re-establish them. They had passed through the trials and needs of the struggle themselves, therefore, without once overturning the laws of the land they were liberating. When the Father of his country, their champion and leader, had delivered up to Congress his sheathed and honored sword, they had listened, with pride, and his venerable form had bent in acknowledgment, as the President addressed him these remarkable words:

"Called upon by your country to defend its invaded rights, you accepted the sacred charge, before it had formed alliances, and whilst it was without funds or a government to support you. YOU HAVE CONDUCTED THE GREAT MILITARY CONTEST WITH WISDOM AND FORTITUDE, INVARIABLY REGARDING THE RIGHTS OF THE CIVIL POWER, THROUGH ALL DISASTERS AND CHANGES."

They had felt this to be his highest praise and theirs, and when, in the first years of his administration, and with his sanction and approval, they amended the work of the Convention, by adding to the Constitution the comprehensive safeguards of civil liberty which have been referred to, it is midsummer madness to dream that it was in his mind or theirs to leave, still, to military discretion or caprice, the inestimable privileges thus fortified anew. When they declared that "the right of the people to be secure in their persons, &c., *shall not be violated*," they had no mental or

military reservation in favor of such violation. They meant what they said, and thus and there stands the Constitution, as they made it—and as others have broken it!

Our own immediate ancestors, when they framed the Constitution of Maryland in 1776, embodied in their Declaration of Rights two principles, from which they never departed nor allowed departure, and which they transmitted to us, for equal reverence and observance. They are the 2d and 27th Articles of the Declaration which is prefixed to our existing Constitution, and they were part of the fundamental law of the State when she adopted the Constitution of the Union. Their language is as follows:

"*That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof;*" and—"*That in all cases and at all times, the military ought to be under strict subordination to, and control of, the civil power.*"

With this authoritative announcement before us, of rights which the citizens of Maryland have at no time surrendered, we can never consent to recognize, in the pretext of "military necessity," anything but an aggravation of the wrong it is meant to justify. Neither can we fail, without disgrace, to denounce as usurpation and outrage, the overthrow of our domestic authorities and institutions, the assumption of our internal government, andthe oppression of our citizens—by the Executive, the Congress, and the army of the United States.

The experience of this General Assembly and of the Memorialists before us, must admonish us, the Committee believe, that any application for redress to the Federal Government, in any of its departments, is idle and hopeless now. There is but one recourse left to us, and that is to appeal to the public opinion and sense of right of the whole country: to call upon free and true men, everywhere, in our own State and in our sister States, to lift their voices for the rescue of the Constitution, before it shall have gone down into the vortex, whose narrowing and rapid circles have already swept its great bulwarks from around the rights of the people of Maryland. It is not, we repeat, a question of Union or Disunion. It is a question of Constitution or no Constitution: a question of Freedom or no Freedom. There can be no trust and no safety, for any people, in arbitrary power. It is progressive, untiring, unresting. It never halts or looks backward. Call it by what holy name you will: sanctify it by what pretexts or purposes of patriotism you may—under any flag, in any cause, anywhere and everywhere, it is the foe of human right, and by the law of its being is inca-

pacitated from leading to good. As surely as man's nature is corrupt and the lust of power the most corrupting and insatiable of his appetites, so surely will any Government or system sink into anarchy or despotism, if committed to his arbitrary will. There is no life for liberty, but in the supreme and absolute dominion of law. The lesson is written, in letters of blood and fire, all over the history of nations. It is the moral of the annals of republics since their records began. It is legible upon the crumbling marbles of the elder world—it echoes in the strifes and revolutions of the new. Wherever men have thought great thoughts and died brave deaths for human progress, its everlasting truth has been sealed and proclaimed. It will be true—it is true—for us and for ours, as it has been for those who have preceded us, and the consequences of its violation will be upon us, as upon them, unless the Providence whom we are mocking shall break the inevitable chain which drags effect after cause. And let the people of no other section shut their eyes to the danger, because it seems to be impending over us only, and not over them. Let them not sympathize with usurpation, because its blows for the present appear aimed only at sections and individuals, whose opinions differ from their own. They know not what a day may bring forth, and they cannot measure the harvest which may spring from a seed-time of impunity in usurpation and wrong. Already the *Habeas Corpus* is suspended in New York, and the District Judge asks the pleasure of the commanding General, and yields—as if the great writ were a favor and not a right, and as if it were a luxury of the Court, and not the privilege of the prisoner. Before long, the suspension of the laws and the Constitution may cease to be for the exclusive chastisement of "rebels," and new tests of "loyalty" may be prescribed in the very States now held most "loyal." If public opinion re-acts against the policy of the Administration, it may be the next "military necessity" to strike down public opinion; and men may then begin to learn, when it is too late, that there is no more security for friends than for enemies, under a system where the power which creates the "necessity" is the exclusive and irresistible judge of its extent and application. Good motives, ascribed to such a power, are no better security than bad ones. Mr. Lincoln himself has said, in his Message, when speaking of another thing—what he, at all events, may not gainsay—"*The little disguise, that the supposed right is to be exercised only for just cause—themselves to be sole judge of its justice—is too thin to merit any notice.*" There are those who may hearken to Mr. Lincoln who will not hearken to Washington; but Washington, in the fare-

well legacy of his affection, has left us these warning words also:

"LET THERE BE NO CHANGE, BY USURPATION; FOR THOUGH THIS, IN ONE INSTANCE, MAY BE THE INSTRUMENT OF GOOD, IT IS THE CUSTOMARY WEAPON BY WHICH FREE GOVERNMENTS ARE DESTROYED. THE PRECEDENT MUST ALWAYS GREATLY OVERBALANCE, IN PERMANENT EVIL, EVERY PARTIAL OR TRANSIENT BENEFIT WHICH THE USE CAN AT ANY TIME YIELD."

We shall more surely and reverently honor the memory of Washington, by following his precepts and example, than even by respecting, under "general orders," the groves and walks around his tomb.

It is no part of the purpose of the Committee to discuss the personal and official conduct of the citizens of whose wrongs they have spoken, for their merits or demerits have but little to do with the great principles which have been violated in their persons. It is but just, however, to say, that the Message of the Mayor of Baltimore—himself fully cognizant of their official proceedings, and a witness beyond question or suspicion—confirms, in the amplest manner, the asseverations of their Memorial, which their own high character for truthfulness and honor would suffice, of itself, to establish. The Memorial of the City Councils corroborates the statements of the Mayor, and all the testimony which surrounds the case demonstrates, to the satisfaction of the Committee, not only the unfounded nature of the suspicions under which the Government has acted, or assumed to act, but the entire good faith in which the Board had met, and was prepared to fulfill its obligations, under the laws of the State and the Union. It is made conspicuously evident, that in the unfortunate affair of the 19th of April, the Mayor, the Commissioners, the Marshal of Police and his men, at the imminent risk of their own lives, endeavored to suppress the riot and protect the troops assailed. Magnanimous acknowledgment of the fact was made through the public prints by Capt. Dike, a wounded officer, as soon as he arrived in Boston. The Governor of this State, (no willing witness,) on page 4 of his Message of April 25th, bore testimony to it in the following strong language: "The Mayor and Police Board gave to the Massachusetts soldiers all the protection they could afford, acting with the utmost promptness and bravery. But they were powerless to restrain the mob." The President of the United States himself in his interview of April 21st, with the Mayor of Baltimore in Washington, did not hesitate fully to recognize, in the presence of his cabinet and of the General commanding the army, the fidelity and loyalty with which the city authorities

had borne themselves, under the trying circumstances referred to. The statement of Mayor Brown, published in the newspapers of April 22d, bears witness to this fact, which is likewise personally known to one of the members of this Committee, and to another member of the House, themselves present at the interview. Mr. Lincoln could not readily have done otherwise, for he knew that on the night of the 19th of April, both Fort McHenry and the United States receiving ship were protected by the troops under the orders of the Police Board, and that the United States officers in command were notified of the fact and put on their guard also by the good faith of the same authorities. In the face of such facts and acknowledgments, it does not appear necessary to recapitulate the explanation given by the Mayor, concerning the "concealed arsenal" of between two and three hundred muskets and rifles—belonging to the Corporation and hidden from illegal search in the Marshal's office—with which a body of four hundred policemen were denounced by Gen. Banks as dangerous to "the peace or security" of the Government, in a city whose population was disarmed, whose homes were commanded by the formidable batteries of Fort McHenry, and in whose suburbs an army was stationed of five or six thousand well appointed soldiers.

The Committee respectfully recommend the adoption of the following resolutions—

A. A. LYNCH,
JOHN F. GARDINER,
JAS. F. DASHIELL,
D. C. BLACKISTON,
TEAGLE TOWNSEND,
} *Committee of the Senate.*

S. T. WALLIS,
J. H. GORDON,
G. W. GOLDSBOROUGH,
BARNES COMPTON,
JAMES T. BRISCOE,
JAMES U. DENNIS,
} *Committee of the House of Delegates.*

WHEREAS, The military authorities of the Government of the United States in Baltimore have assumed to remove from office the Marshal of Police of that city, an officer of the State of Maryland, and to appoint his successor; and have further assumed to dismiss from office the Board of Police of Baltimore, a body clothed with high powers by the State of Maryland for the protection of its citizens; and have actually put an end, by force, to the exercise, by

said Board, of its lawful and important functions; and have appointed sundry individuals, in large numbers, to govern the said city, as policemen, in contempt of the constitutional rights of the State of Maryland, and in open and flagrant violation of its laws; and

WHEREAS, The Congress of the United States, instead of rebuking the wrong and usurpation aforesaid, has justified and approved the same, under color of a "military necessity" not known to the institutions of the country and fatal to its liberties, and has appropriated large sums of money for the compensation of the said unlawful police force, so that the members thereof are maintained thereby in daily and oppressive hostility to the laws of Maryland and the rights of its citizens, and constitute in fact a civil government, established by Congress over the chief city of this State; and

WHEREAS, Charles Howard, William H. Gatchell and John W. Davis, Police Commissioners aforesaid, having been arrested by order of the General commanding the army of the United States, and imprisoned in Fort McHenry, under frivolous and arbitrary pretexts, without oath, warrant, presentment of a Grand Jury, or lawful cause disclosed or trial had, have since been removed, by military force, under the same orders, to Fort La Fayette, in New York, where they are now held, as "prisoners of State," at the arbitrary pleasure of the President of the United States and the officers under him, at a distance from their homes and families, in utter defiance of law and constitution, and in criminal violation of the plainest and dearest rights to which American citizens are born; now, therefore, it is

Resolved by the General Assembly of Maryland, That we solemnly protest, in the name of the State and her people, against the proceedings aforesaid, in all their parts; pronouncing the same, so far as they affect individuals, a gross and unconstitutional abuse of power, which nothing can palliate or excuse, and, in their bearing upon the authority and constitutional powers and privileges of the State herself, a revolutionary subversion of the Federal compact.

Resolved, That we appeal, in the most earnest manner, to the whole people of the country, of all parties, sections and opinions, to take warning by the usurpations aforementioned, and come to the rescue of the free institutions of the Republic, so that whatever may be the issue of the melancholy conflict which is now covering the land with sacrifice and sorrow, and threatens to overwhelm it with debt and ruin, there may at least survive to us, when it is over, the republican form of government which our fathers

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bequeathed to us, and the inestimable rights which they framed it to perpetuate.

Resolved, That the President of the Senate and Speaker of the House be, and they are hereby requested to cause copies of these Resolutions to be transmitted to our Senators and Representatives in Congress, and also to the Governors of the several States, with the request that they be submitted by the latter to their respective Legislatures.

The foregoing Report and Resolutions were adopted in the House of Delegates by the following vote:

AFFIRMATIVE.

E. G. Kilbourn, Speaker,	G. W. Landing,
P. F. Rasin,	A. Kessler,
Albert Medders,	John A. Johnson,
B. A. Welch,	Wm. E Salmon,
R. C. Mackubin,	G. W. Goldsborough,
Jas. T. Briscoe,	H. M. Warfield,
Benj. Parran,	J. C. Brune,
John T. Ford,	Chas. H. Pitts,
R. M. Denison,	Wm. G. Harrison,
L. G. Quinlan,	J. H. Thomas,
Thos. W. Renshaw,	S. T. Wallis,
J. L. Jones, of Talbot,	Lawrence Sangston,
Alex. Chaplain,	H. M. Morfit,
Jas. U. Dennis, of Som't,	T. Parkin Scott,
Z. W. Linthicum,	Joshua Wilson,
Wm. Holland,	Martin Eakle,
Jas. W. Maxwell,	J. C. Brining,
Wm. R. Miller,	Josiah H. Gordon,
Rich. Wootton,	W. R. Barnard,
E. A. Jones, of P. G.,	Bernard Mills,
W. H. Legg,	John R. Brown—42

NEGATIVE.

W. T. Lawson,	R. B. McCoy,
A. McIntire,	L. P. Fiery,
Jonathan Routzahn,	David Roop—7.
Wm. F. Bayless,	

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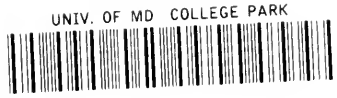
And in the Senate by the following vote:

AFFIRMATIVE.

John B. Brooke, Pres't,	A. A. Lynch,
D. C. Blackiston,	T. J. McKaig,
Washington Duvall,	Oscar Miles,
James F. Dashiell,	Teagle Townsend,
Thos. Franklin,	J. S. Watkins,
John F. Gardiner,	Franklin Whitaker—12.

NEGATIVE.

S. J. Bradley,	Tilghman Nuttle,
H. H. Goldsborough, of Talb.	J. E. Smith,
Anthony Kimmel,	J. G. Stone—6.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